

THE AM LAW LITIGATION DAILY

March 15, 2016

Human Rights Hero Jared Genser on Dictators and the World's Worst Prisons

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Text of article

No lawyer in the world has a client list like Jared Genser. A former partner at DLA Piper, the human rights lawyer represents political prisoners, Nobel Peace Prize winners, people who are imprisoned overseas for telling the truth or trying to make the world a better place. Even more extraordinary is how many he's been able to set free through his work as the founder of Freedom Now and his public interest law firm, Perseus Strategies.

He spoke with The Litigation Daily about his work, including his recent partnership with Amal Clooney to free the ex-president of the Maldives, and how law firms can help.

The interview has been edited for clarity and length.

Litigation Daily: As a third-year law student at the University of Michigan Law School, you won the release of a British activist from jail in Burma. How did this come about?

Jared Genser: In my second year, I had a one-semester externship in London with a human rights group called the AIRE Center, which stands for Advice on Individual Rights in Europe, and whose work focused primarily on taking cases to the European Court of Human Rights.

I read in the newspaper one day about a British guy named James Mawdsley, who had gone to Burma to protest human rights abuses there, and had gotten a 17-year prison sentence in solitary confinement. To be fair, this was his third arrest in Burma. The first time he protested, he was immediately deported. The second time, he got a sentence for illegal entry but was deported after 90 days. This time, they gave him 17 years in prison.

I went to my boss and said 'Hey, can we do something about this?' I ended up taking his case to the U.N. Working Group on Arbitrary Detention and when I left after the semester, I took the case with me, because it wasn't really what this NGO typically did, and because you don't have to be a lawyer to take a case to this U.N. body.

I was in Washington for the summer, and I was able to generate a letter from five senators and 18 members of Congress going to the Burmese government saying it should let him go. Back in law school in the fall of my third year, two things happened that triggered his release. The first was the [favorable] judgment from the U.N. And then, at about the same time, word came out he'd been beaten up in his cell.

James is a rather smart guy. He had consular visits once a month from the British consulate and if he had done something to trigger a beating right after they visited, the bruises would heal by the time they got back. He had also heard from his sister who visited him that this U.N. opinion was forthcoming. We learned later that he had intentionally provoked the beating.

The U.S. and U.K. began immediately calling for his release and other governments joined in. Within 48 hours from the release of the U.N. opinion, the Burmese junta had caved and announced he was going to be freed.

LD: What was your reaction?

JG: It was obviously stunning to me in a whole host of respects, given that this was my first case. I was in Ann Arbor in my law school dorm when I got the call. Within 24 hours, I was on a plane to London.

The following morning, a bitter cold morning, October 20, 2000, a day I will never forget. I was there at the airport. In front me, I see him being reunited with his entire family. It was incredibly moving as you can imagine.

James was then introduced to me by his mother, who said 'James, this Jared.' He gave me a firm handshake and a huge smile and said, 'Thanks, you saved my life.' I was just floored. I was like 'Wow, this is exactly why I went to law school.'

LD: I guess you couldn't go be a tax lawyer after an experience like that.

JG: Precisely. I just was blown away, so incredibly excited about having been involved in it and gotten that outcome.

I graduated from law school in the spring of 2001. I looked around to see if there was anyone out there doing that kind of work. I went and talked to some folks at Amnesty International, because I thought this was what they did. Their lawyers group told me no, they don't represent individual people. In addition, because Amnesty covers many countries in the world and has a professional staff, its volunteers can't just go up to Capitol Hill and lobby on behalf of anyone using the Amnesty name.

I suppose in some respects it made sense no one was doing this. I'd done it entirely pro bono. There was no money to be made. And this was not an exclusively legal effort. It was an interdisciplinary effort that involved legal, political, and public relations advocacy.

It's fair to say when I'd gotten James out, however, I wasn't overly impressed with myself. I'd gotten a white guy out of a Burmese prison. The real question for me was, will this work to get a Burmese person out of a Burmese prison, a Chinese person out of a Chinese prison, and so forth?

This is what prompted me and a group of friends in the spring of 2001 to found Freedom Now. Our mission quite simply is to free prisoners of conscience through legal, political and public relations advocacy efforts.

There are lots of people who can be detained arbitrarily who are not prisoners of conscience. A prisoner of conscience is a person who has been detained because of who they are or what they believe, who has neither used nor advocated violence. We're talking about journalists who are imprisoned for writing critical things about their government or human rights defenders or political leaders who end up imprisoned because their work is a threat to the government.

We started as an all-volunteer group. We hired our first full-time staff person in 2009. We now have three full-time staff, one in London and two in Washington. We work with pro bono lawyers at large law firms typically. We've freed roughly 50 people from 24 different countries and we currently have about 28 active cases in different countries all over the world.

LD: Does that include the work you've done through your firm, Perseus Strategies?

JG: I've personally taken up and resolved roughly 40 cases over the years, many through Freedom Now, but many outside of it. For example, after five years representing Burma's democracy leader and Nobel Peace Prize Laureate Aung San Suu Kyi, I ended up taking up many more cases of political prisoners in Burma.

As an NGO, when we look at case selection, we try to balance out both the countries and regions we're working in, and also the kind of case it is thematically – religious freedom, journalist, political activist, etc. It didn't make sense to run a dozen cases on Burma through Freedom Now. But I've taken the methodology we've developed and ended up representing a range of people that way.

Through my public interest law firm, I've also ended up taking a number of cases that are not prisoners of conscience, but are people who imprisoned on egregious due process abuses who I believe are innocent of the crime with which they are charged. I've ended up working a number of those cases on a fee-paying basis.

LD: How did you go from DLA Piper to founding Perseus?

I was at McKinsey & Co. for a few years coming out of law school. I lateraled into the government affairs practice at DLA Piper and ultimately was elected a partner there. But my work was not typical large law firm work. I represented private foundations like the Bill and Melinda Gates Foundation. I also represented high net worth individuals who cared about human rights issues. For example, I represented a person who had been involved in the Cedar Revolution in Lebanon to create the Lebanon Renaissance Foundation.

I also did number of very large and high-profile pro bono matters at DLA, which helped me build my career as a human rights lawyer.

For example, I represented [former Czech President] Václav Havel and [Archbishop] Desmond Tutu, who commissioned DLA to produce a report on why the situation in Burma should be placed on the permanent agenda of the U.N. Security Council. We ultimately prevailed, which advanced international pressure on the regime. That was a huge report, 125 pages, 700 footnotes, working with a dozen pro bono lawyers and paralegals within DLA. The firm was very supportive of me doing those kinds of activities.

I loved what I did at DLA but wanted to run under my own steam, have my own paying clients and pro bono clients, to write and teach.

LD: Often lawyers represent people because they've done something shady or bad. But your clients are the opposite – they're the best of us. Do you often feel awed or humbled by them?

JG: It's my clients that inspire me and my team to invest so much time on their behalf. I've been incredibly lucky in my career to get to know and work with some of the most amazing people on earth.

For example, Archbishop Desmond Tutu has been a mentor in my career. I first got to know him on the project on Burma I mentioned earlier a decade ago. He and Vaclav Havel became the first honorary co-chairs of Freedom Now.

I began representing Liu Xiaobo [the imprisoned Chinese human rights activist] about three months before he won the Nobel Peace Prize, and then ended up getting to know his wife Liu Xia quite well during the few months we were getting a submission together for the U.N. on his behalf.

After he won the prize [in 2010], the security cordon came down around Liu Xia. Because of that, I and my good friend and former client Yang Jianli, who had worked with Liu Xiaobo and introduced me to his wife, ended up representing them to the Norwegian Nobel committee.

LD: What did that entail?

JG: Yang Jianli and I spent two months preparing for the prize ceremony itself, facilitating the invitations for the people Liu Xiaobo and Liu Xia wanted to come.

I was there front row center, 15 feet away, as the prize was presented to the empty chair.

One thing that was particularly extraordinary for me was walking into the great room in Oslo City Hall and seeing this massive photograph of Liu Xiaobo that was on the left side of the stage. To get that photo, we had to send in a member of [his wife Liu Xia's] family with a flash disk in the person's shoe. It was then snuck out in the shoe and uploaded to me from an Internet café.

Going in to law school, I had an aspiration to help people who were suffering from human rights abuses. At the time, I didn't really understand what that meant. But I never had reason to believe I'd become the equivalent of an international criminal defense lawyer for prisoners of conscience.

LD: Tell me about your work for another Nobel laureate, Aung San Suu Kyi, the Burmese stateswoman who spent 15 years under house arrest.

JG: When I began representing Aung San Suu Kyi, she'd never had an international lawyer before. Her case had been all force and no vector. Every government and NGO in the world wanted to help Aung San Suu Kyi, but there was no coordination between them, and everyone would go off in different directions.

There were few incentives for NGOs to collaborate, because each group wanted to do its campaign for Aung San Suu Kyi in its way, and had no reason to work with the other groups. Because I was retained by her family to represent her and was working with her counsel on the ground and getting instructions from her through him, I was able to bring a discipline to the work.

One idea I came up with was to get everyone working together to achieve a very simple goal: send a letter to [U.N. Secretary-General] Ban Ki-moon urging him to personally engage on this case. We made it clear this was all about what's best for her, not about credit. We said every group that participates can put out a press release in its own name taking credit for having helped made it happen.

We ended up with a letter from 112 former presidents and prime ministers from more than 50 countries to Ban Ki-moon. Within six weeks, he was in Burma, the first sitting secretary-general of the United Nations to have ever visited the country.

It was about figuring out message, messenger and timing. What's the right message? To whom do you want to direct the message? Why now? The letter had a profound effect.

In my work on behalf of Liu Xiaobo and Liu Xia, we were also able to get a letter from 134 Nobel laureates, across all six Nobel disciplines, pressing for their release. I will say with some disappointment, the one laureate who did not sign on to that letter was President Obama.

LD: Why didn't he sign it?

JG: The message I got was that he was the president first and a Nobel laureate second. The president to me has been a disappointment on Liu Xiaobo and Liu Xia's cases. The administration has not been forward-leaning on Chinese human rights. No one in the White House from the president on down has ever said Liu Xia is under house arrest and must be immediately released. That matters because the Chinese government for five years has said she's not under house arrest.

LD: Have you been able to meet with her?

JG: No. She has been able to see her family and husband monthly. But only a few journalists have been able to sneak in a see her.

LD: How important is publicity in your cases?

JG: People think of human rights lawyers and think it's all about high-profile 'name and shame.' You can't bludgeon a government into letting a person go based on public relations alone. There have been cases I've worked where there's been literally no publicity at all associated with them, because publicity would be counter-productive to the goal of getting my client out of jail.

LD: One case that has gotten extensive publicity was your work with Amal Clooney to free the ex-president of the Maldives, Mohamed Nasheed. What was it like working with her?

JG: Amal is a fabulous lawyer and a great partner. It's been great to be able to work with her and her fellow barrister Ben Emmerson on the Nasheed case.

LD: What have you learned about dictators over the years?

JG: Dictators are motivated by only one emotion – fear. Fear of losing power, and fear of justice and accountability. Until you can trigger a fear response from a dictator, there is no reason why they will change course. I've seen that over and over again. Carrots are not going to motivate dictators to let people out of jail, because the people we're talking about, the people I represent, are typically a major threat. I take up cases that are indicative of broader abuses in a country. If my clients are freed, many more people domestically will be emboldened to take similar action. I'm very strategic about the cases I take up, just as one would do with impact litigation. Because of the threat posed by these people who are arbitrarily detained, there is no reason for an authoritarian ruler to release my clients until it is the least-worst choice of a lot of bad choices he is facing.

The challenge and trick of getting a prisoner of conscience out of jail is looking at the broadest range of legal, political and public relations strategies you can deploy and figuring out how to sequence those activities to deploy them for maximum impact.

My work is very much grounded in being a lawyer, looking at the obligations of states under international law, and looking to close the gap between their commitments and their practice, but that alone is never sufficient.

LD: Of all the prisons in the world, where would you personally least want to be held?

JG: China. I represented a persecuted human rights lawyer in China named Gao Zhisheng. He was an extraordinarily brave guy who repeatedly stood up to the government, was disappeared, tortured, reappeared, disappeared again.

I started representing him in 2009 and it took four years to get him out. He spent about three and a half years in an underground cell in a prison in a remote and freezing cold part of far Western China. He was only given shorts and a tee shirt. He literally was shivering throughout the winter. The cell had a 5-watt bulb in it, no windows, no ventilation of any kind, no reading materials of any kind. He was fed once a day a bowl of soup and a steamed bun. Two thirds of his teeth fell out from malnutrition. He had lost 40 percent of his body weight and much of his hair had fallen out. Because he was held in solitary confinement, the guards were instructed not to talk to him. When he got out, he literally couldn't talk. He hadn't spoken to anybody for years. And this is how they treated a human rights lawyer.

LD: What can law firms do to help free prisoners of conscience?

JG: I love that question. I understand law firms have conflicts – real conflicts, where they're actually representing governments, and business conflicts, where they represent clients that do business in countries that they don't want to run afoul of. But there are countries that we work in where law firms don't usually go or touch. Places like The Gambia or Cameroon or Iran or Turkmenistan. We work all over the world, with cases in such far, dark places. No major law firm is going to end up with a business conflict with countries like this.

We can always find a case for any law firm that they'll be comfortable taking up. I think the other reason to do these kinds of cases is because of how interesting and compelling and interdisciplinary they are. We provide the training and support to lawyers that partner with Freedom Now. And these are especially good cases for junior associates because they can take on real responsibility straight away.

To be able to fight the good fight on behalf of someone who is so egregiously and wrongly held provides opportunities to access high level people in government, to get to know them, to meet with editorial boards and journalists. People want to help. When you come in as a lawyer representing someone in these circumstances, it's a very gratifying experience. And to succeed in the end, well, there is just no other experience like it.